



## Yale Review of Law and Social Action

Volume 1

Issue 2 *Yale Review of Law and Social Action*

Article 11

1971

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### Recommended Citation

*Models of Legal Practice Which Enrich the Soul: A Discussion with Four Activist Lawyers*, 1 YALE REV. L. & SOC. ACTION (1971).

Available at: <https://digitalcommons.law.yale.edu/yrlsa/vol1/iss2/11>

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## Models of Legal Practice Which Enrich the Soul: A Discussion with Four Activist Lawyers

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Peter Hearn is a partner in the firm of Pepper, Hamilton and Scheetz in Philadelphia. He has participated in many civil rights and public interest cases.

Robert Sugarman is an associate with the Philadelphia law firm of Dechert, Price and Rhoads. He is also counsel to the Citizens Committee to Preserve and Develop the Crosstown Community.

Edwin (Ned) Wolf is presently Executive Director of the Lawyers' Committee for Civil Rights Under Law in Philadelphia. He has been a Staff Attorney for the United States Commission on Civil Rights and an Assistant District Attorney in Philadelphia.

Kas Kalba, a staff member of the Sloan Commission on Cable Communications, and Allen Zerkin, a third-year student at Yale Law School, are editors of the *Yale Review of Law and Social Action*.

**Zerkin** Ned, how is the Lawyers' Committee for Civil Rights Under Law attempting to provide legal services for the poor?

**Wolf** The Lawyers' Committee was founded by two leading representatives of the establishment bar—Bernard G. Segal, now the President of the American Bar Association, and Harrison Tweed—at the request of President Kennedy. Its initial task was to fulfill a traditional charitable lawyer's role. For the first five years, the Lawyers' Committee sent lawyers to represent blacks and civil rights workers in the South.

After the Kerner Commission Report, the National Executive Committee of the Lawyers' Committee decided that the Kerner Commission had something to say to lawyers and that lawyers could have something to say about the problems described by the Kerner Commission. They set up steering committees in fourteen cities, headed by prominent lawyers and funded by the Ford Foundation. Each local committee hired an executive director whose duties and function depended upon the kind of program that the committee thought it was going to run.

101

Here in Philadelphia, the committee has allowed me a fair amount of discretion. My role is to find cases or to develop them myself and then to pass them on to law firms, which are supposed to handle them in their entirety without any further reference to me. In practice, of course, it sometimes takes a certain amount of prodding from me. The lawyer to whom I've referred a case might be very committed to social change but might therefore be very busy, too busy to pay attention to the things he gets from me; or he might not be committed and for that reason won't pay much attention.

You only find out whether a firm is moving on a case over a period of time. There are all kinds of reasons why some of our cases don't proceed as quickly as one might like them to, many of them legitimate. It definitely has something to do with the clients. In several cases that concern the school board, the clients are not particularly involved. The problem is that the cases develop out of my conversations with people, out of my own feeling that a particular situation needs changing and my subsequently suggesting to the would-be client, 'You really ought to do something about this, and I have just the right legal theory. Why don't you let me try it?' That kind of initiative may make a client willing to get involved, but it doesn't produce a hungry client, the kind who will sit on a lawyer's back. In cases where we have had hungry clients, we have had better responses from the lawyers.

Our position in a case also depends very much on the view that the law firm has of the role of the Lawyers' Committee. Some firms regard the Committee as a broker or an intake bureau—this is my view, as well. In effect, these firms are saying that they really want to take these cases, but that they are not going to spend the time in the community developing them and that they want us to do that for them. These firms take on the matters we give them pretty aggressively. On the other hand, some firms feel that the Lawyers' Committee is their client and that they should do only what we suggest they do. That kind of situation is a real drag, because the firms never take any initiative. They keep calling me up and asking what I want them to do next.

The theory behind the Lawyers' Committee involves a firm endorsement of a project and firm responsibility for it. We want the projects to be directed by senior attorneys. I have my option in most firms of going to a young lawyer directly and asking him to take a case or of going to the partners and asking them to take the case as a firm matter and obviously have a young guy work on it. The problem is that if I go directly to the young lawyer, he is not going to get supervision. And if I give him too heavy a case, he's not going to be able to handle it—not through lack of time, but simply through lack of experience and knowledge of how to go about it, how to keep the appropriate kind of litigation pressure on, how to use the rules, how to use discovery and how to develop things before a judge. A young fellow, no matter how willing, interested and committed he is, just doesn't know the tricks of the trade.

**Zerkin** Are there any problems arising from the law firm's orientation to its paying clients?

**Wolf** Some of the firms are terribly conscious of conflicts of interest. We had an interesting situation in which I asked a firm to take a case that attacked a road because it was going to take public housing without adequately providing for relocation. But the firm represented transportation interests and the partners said that they could not take the case. Because their clients might want them to promote the road, they couldn't get involved in a situation where they might have to advocate stopping the road, albeit only for strategic purposes.

**Zerkin** Was that the real reason?

**Wolf** Yes. I don't think there was anything else involved in this instance. But I think that when we produce cases which might rock the boat, most firms start to look very carefully to see if they can't find a conflict. It gets pretty extreme sometimes.

One firm that I asked to take a case concerning one small inequity in the procedure involved in judgment notes said that it couldn't do it because it represented one of the big department stores. It turned out that it didn't represent the department store; it represented the family of the founder of the department store, but the members of the firm felt that liberalizing procedures relating to judgment notes was in conflict with that representation.

- Gilhool** It's an economic issue. It affects their budgets.
- Sugarman** It's not the time of their associates, it's the potential loss of clients.
- Hearn** Is it really the loss of clients? I've been in a large law firm for eight and a half years, and I have not seen one client question what other lawyers in the firm were doing. It seems to me that it's really a very remote occurrence.
- Sugarman** I see it happen all the time, Peter.
- Hearn** Well, I would have thought that it's a greatly overplayed issue and that clients take the position, 'I don't care what they say about my lawyer as long as they spell his name correctly;' in other words, that they like their law firm involved in things. They like to read about their lawyer in the paper regardless of what he's doing.
- Sugarman** People in our firm have said to me, in terms of the firm's direction and the level of its commitment, that it's not just a question of getting the firm; it's a question of getting the clients—the bank presidents, the corporation executives. 'Get them to have a commitment, and then it will be far easier for us to.' Now, there's a lot of self-serving cop-out in that, sure. But on the other hand, that is the nature of the relationship between the firm and its clients. It's self-abnegation in terms of determining priorities.
- There's another side to this, though, where the real concern is not the loss of the client. Take a firm that has a great

deal of business with the city, as many do. A firm like that probably has political contacts, and in part, those contacts are a reflection of the fact that the guys in the firm have beliefs that are similar to those of the city politicians. A senior partner who's been successful in getting business from Mayor Tate probably thinks like Tate. Therefore, when the Lawyers' Committee, which so far has only been involved in public controversies—in other words, matters involving the police, the Redevelopment Authority, HUD—gives this partner's firm a case that attacks something Jim Tate believes in, it is going to arouse in him the same response that would be aroused in Jim Tate. Now, he can say that the firm will lose the city's business if it takes the case, and he might be right. But, even if he isn't, he operates on the same wavelength as the city, and something that goes against the city goes against him, too.

- Wolf** Let me give you an example of why I don't think that's entirely true. One day, I was talking to a middle-level partner of a large firm that has a lot of city business. He's a fairly liberal guy, very much concerned with housing problems and economic development situations. He told me that he was going back to the office to write a memo to a client on the tax consequences of moving from Philadelphia to New Jersey, and I said to him, jokingly, because we were coming from a meeting where we had been discussing this very issue, 'Of course, you are going to tell them that it's not in Philadelphia's interest to move out.' Now, despite the fact that the firm has the closest of ties to the city administration, he said, 'No, I'm not going to, because that's not what I was asked.' I could tell he was sort of sorry that he wasn't going to, but he wasn't sorry enough to do it. This seems to mean that he is not swayed either by his personal views on whether it's good if this company moves out of Philadelphia or by the corporate views of his law firm, which is tied to the city.

**Zerkin** That's a different type of situation, though. Bob was talking about cases involving public institutions, not about things that happen to have an effect on the city.

What I see in this is the operation of a double standard. On the one hand, lawyers see themselves as being hired guns who pursue the interests of their regular paying clients and who don't allow their own values to interfere. But if Bob's right, when it comes to cases referred by the Lawyers' Committee, they're reluctant to take cases they don't agree with.

**Gilhool** I think that's right.

**Hearn** As I see it, the hope lies in those people who are coming into the firm, the students, the bright people who are able to do the work that the firm needs to survive. A firm needs good associates to maintain a high level of profitability, and the associates are increasingly demanding more than just their annual salary increments, merit bonuses and what not. They're putting a condition upon their work, namely, meaningful involvement in efforts to bring about social change.

**Gilhool** I'm not sure how far that can go. It's not in the cards for the law firms to turn around in such a way that everybody is going to be doing the things that Peter Hearn and Bob Sugarman do.

**Hearn** Well, I think our firm has realized that it has to allow some of the associates to do this work or it won't have the bright, able people I know it wants. I think the firm's leadership has given sympathetic and fair consideration to these problems. For example, an Urban Legal Problems Department has been created.

**Sugarman** I see two problems with this, Peter. One is that the firm may believe itself to be in so strong a position that it may not feel a need to attract the young associates who think in this direction. Therefore, it doesn't make any concessions. I remember having a conversation with a hiring partner in a major law firm a couple of years ago, in which I said what you said. His answer was: 'The hell with that. We just won't hire those people. We can get along with what we've got.'

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**"My hope is that the young people will change the firms. But they should be a lot better than they are. They're not as active after three years as they give promise of being."**

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**Hearn** Well, that's antithetical to the situation as I know it. They're falling all over each other in the recruiting program every year.

**Sugarman** I realize that. This particular guy is no longer the hiring partner, so maybe you're right. But firms may not be as dependent as we might think, and even if they are, they may be able to convince young lawyers that they are not. The other problem—well, when I was graduating from law school, they used to say that the Wall Street firms hired all Democrats, and that by the time they made them partners, they were all Republicans. You can get a job, but you make compromises and accommodations to survive. The question is who makes the greater accommodation?

**Hearn** Well, if there's a problem with the thesis that the young people will change the firm and what it does, it is that these young people should really be a lot better than they are. They're much better than their predecessors, but they're just not as active after three years as they give promise of being when they come into the firm.

**Sugarman** That's right. Who's benefiting more? Are we benefiting because these guys are educating the clients, or are the clients benefiting because they are co-opting these guys?

**Hearn** If the guys who are really able and whose services are very much sought out are also the ones who have the strong feelings about this, they can hold out. It's the ones who begin to wonder about partnership and begin to think in terms of security whom you hear less from after three years or so.

characterized it in the past and that there is, therefore, an increasing amount of room to reconcile remunerative work and commitment. This is a different answer from the one Peter gave. I'm talking about the possibility of getting cases which are both worthwhile from our point of view and productive for the firm.

**Gilhool** Ned, the Lawyers' Committee seems to have a cadre of probably no more than a dozen people around town who are doing a hell of a lot of its cases. I'm interested in knowing how they stand inside their firms in terms of their professional future and their advancement. Are they valued, are they rewarded with the same increments, are they moved along at the same pace or do they fall behind the guys who are doing the bonds and the taxes all the time?

**Gilhool** You sound like Robert Dahl.

**Sugarman** As both sides become less monolithic—for example, as rich people begin to be concerned about highways encroaching on the suburbs—there is an increasing understanding and receptivity, on the part of people who correspond to the clientele of the firms, to what you might think of as anti-establishment forms of legal representation. And that seems to me to be an area of hope, if it can be played out.

105

**Wolf** I think that the firms recognize that these guys are going to do a better job for them on the firm's work than the guys who have less imagination and less drive.

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**“They used to say that the Wall Street firms hired all Democrats and that by the time they made them partners they were all Republicans.”**

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**Gilhool** You really think that's true? I don't know if Sugarman is productive for his law firm or not, but I really find it hard to believe that he is!

**Hearn** There's a fellow who's been in our firm about four years. I hope we can make him a partner soon. He is probably the most able associate in our business department, and yet he's really tuned in to a lot of things and wants to participate and, in fact, insists upon doing so.

**Hearn** Do you think that affords a better hope than the younger people within the firm?

**Gilhool** And he's able to wheel and deal for a major client and also wheel and deal for people in North Philadelphia?

**Sugarman** It is the younger people in the firm, because the older ones are not capable of thinking this way.

**Hearn** In fact, because he is able to wheel and deal for a major client, his efforts in controversial areas are permitted and indeed looked upon with some favor.

**Gilhool** . . . Of seeing the opening.

**Sugarman** That's right.

**Sugarman** It seems to me that our society is breaking up into a multiplicity of interest groups rather than retaining the establishment-anti-establishment split that has

**Gilhool** Peter, has the fact that you have taken the police cases had an effect on your firm?

**Hearn** The Goode case—an injunctive action in federal court against top police officials—has certainly brought the greatest internal confrontation in the firm. It's hard to say where those of us within the firm who support such activities have come out in terms of the rules of the game. But I

think that we've protected the viability of these kinds of activities. I don't know whether the scars we have received as a result of the fight will make us a little more reluctant to get into a fight like this again or whether other people in the firm, having seen the battle that we all went through, will be a little more reluctant and will, in a sense, pull their punches. The policy remains the same.

**Gilhool** The rules of the game are important. In my experience with this kind of lawsuit, firms tend to say, 'It's fine, as long as we have a chance to review the merits of the case and see that you're going down the right avenue procedurally, and as long as we have an opportunity to talk about it and are able to touch all our bases.' But that's debilitating.

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**"To a judge, anyone who challenges the cops is presumptively nuts. The competing principle, however, is that people from conservative law firms aren't nuts, and you have to try to use that principle for all it's worth."**

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**Zerkin** What effect does active involvement in controversial cases or areas have on a lawyer's ability to function? In what ways is his professional credibility affected by his activity?

**Hearn** I am somewhat concerned right now with being viewed as anti-police because I've had three or four police cases at one time. This troubles me in the sense that I don't want to be viewed as a crusader in a particular area. I would like to be known as a reasonably balanced lawyer who takes a case if something has to be done and if representation is needed.

In terms of credibility, it seems to me that if I'm too strongly identified with one point of view, people won't believe my narration of what happened in a given situation or lawsuit. People will say, 'Well, this guy is anti-police, therefore he sees different elements in situations than I would, and, therefore, I can't believe what he tells me about the situation.' For example, I was involved in a case in the Federal Court in the Middle District of Pennsylvania, and I was concerned about the effect that bringing the Gerald Goode case here in the Eastern District would have on the decision there and about whether the judge who had that case knew that I was involved in the one here. You see, I rather liked having the image of a guy from a large, conservative firm who took this Middle District case because the facts screamed to have it taken. Launching the second case, however, got headlines in the Philadelphia *Inquirer*. It might have gotten on the AP wire and then been written up in Scranton where this judge was sitting. The judge might well have said, 'Here's this guy whose case I now have under consideration—now he's suing police officials down in Philadelphia on the same kind of thing.'

**Sugarman** That's a very real consideration. You're talking about judges who think, 'You just don't challenge the cops,' and that anyone who does is presumptively nuts. The competing principle, however, is that people from conservative law firms aren't nuts, and you have to try to use that principle for all it's worth. In my view, you do just that when a guy like you handles one or more of these cases.

**Gilhool** It seems to me that this goes to the ability of the courts to understand that the facts are as the facts are. In the police area, resistance to that is extraordinarily high. In public assistance cases, one would have expected it to be extraordinarily high too, and maybe it was. But the fact is that in the Eastern District of Pennsylvania, and really all across the country, bringing welfare case after welfare case has gotten us to the point where the courts respond consistently and with familiarity to the facts.

**Sugarman** It's the same in the highway area, Tom. The public talk about highways has changed dramatically in the last twelve to fifteen months. Of course, the environmental protection thing has had a lot to do with it. The other day, I received a call from a lawyer whom I've never met but with whom I've talked about negligence cases in which he's been on the other side. He said he hated my guts for three years, though he didn't know me, because of the stand I was taking on the Cross-town Expressway. But he said that just within the last few weeks he'd come to agree with me, and he wanted me to know that.

**Hearn** Well, that's a development that I don't foresee in the police area.

**Gilhool** I think the possibility of it has been enhanced considerably in the last three months.

**Hearn** A lot of things which have happened in the police area in the last three months are relatively hopeful signs. However, I'm still very much depressed about repression and the general willingness of the society, as Lindsay said, to accept repression as long as it comes with a soft voice.

**Gilhool** I would have thought the same thing about the courts and the decision-makers at large on questions involving illegitimate children and the consequences of illegitimacy in the public housing, welfare and tort areas, but things went fairly fast once the facts were intensively . . .

**Wolf** Illegitimacy is not threatening, though. There's nothing as threatening as charges against the police.

**Hearn** Personally, I am enormously concerned about the police area and its political implications, but I'm also concerned about the way I'm identified professionally. I'm trying to maintain a low profile now, although in this kind of case, it's very hard to do. Of course, I'm going to see through each case in which I'm now involved, but I would like to lie low on police cases for a while.

On the other side of the coin, I think that because of the last three cases we've been in, four of us in the office are probably better equipped to handle a police case than any other shop in town. The

concepts are thought through; we know what a 75-48 is (it's a police form); we know something about police procedures. There's a practical expertise in this area, just something about trying suits against police which is different. You can't leave anything uncovered at any time. A lot of the assumptions and normal practices of litigation just don't operate in the police situation, and you've got to be able to anticipate when somebody may be pressuring your witness or doing things of that sort, whereas in normal litigation you might overlook them.

**Gilhool** So there you are. You should be trying police cases for the next five years. But how can you do that?

**Hearn** I think it would be a serious mistake for me to do it. By the time I get to the end of these cases, I think I may be so well identified with them that I'll have trouble shaking the image for the rest of my professional life—if indeed I want to shake it.

The other night at a Bar Association reception, a guy from a prominent firm in Philadelphia introduced me to his wife as the 'cop-hater.' Well, all right, that may be just social talk and rather lightly tossed off, but it strikes at the thing that concerns me right now. I don't want to be identified as a guy who is not interested in housing or education but who is somehow on a crusade to get cops. As a litigator, at least fifty per cent of the business I see coming in and hope to get in the future comes from other lawyers. So I think the profession's regard for me is important. I'm getting right down to everyday economics. I like to have business coming in, and it seems to me imperative, given my controversial position in the firm, that I maintain a posture as a good business-getter. I've got to bring in clients. I've got to show good billings to keep my critics at bay. So I would hope that lawyers, when thinking of someone to whom to refer a case, would think of me. But it seems to me that while they'll want a competent guy, they won't want somebody who's just identified . . .

**Gilhool** . . . Who's far out and 'behind the eight ball.'

107



**Hearn** That's right. Another lawyer I know is a little scarred in this respect. He has been so identified over a period of years with causes of this sort that today, I just don't see him in cases as important as those he was in a few years ago. I don't think that he has the same kind of clients today. It's this identification in areas that we're talking about which may have cut into his practice.

**Sugarman** I've had the opposite experience in the highway area. The more of these cases that I try, the more acceptable it becomes to take them.

108 **Gilhool** You know, lawsuits are part of the process of changing public opinion. I wouldn't want to be overly sanguine about it, but it seems to me that it is within the realm of possibility that before November, 1971, the whole police issue could be turned on its head in such a way that nobody would introduce Peter Hearn as a 'cop-hater' but as the guy who brought the cops back where they ought to be.

**Hearn** Well, if things like the attack upon David Cohen continue, that very well could happen; but it's a long shot. David Cohen is a city Councilman. He announced that he was going to open his office to the handling of police complaints and that because he was an elected official, he expected that the Police Commissioner and the other people in the Police Department would be responsive and would investigate and report to him. About eight days later, something called the 'Veterans Committee to Support the Police,' which had, by its own admission, been formed just three days before, came out with a full 'exposé' of everything that Cohen had done in the 1930's—that he had been a member of four 'Communist-leaning' organizations, including the National Lawyers' Guild, and so on. It really was a classic McCarthy-type attack. It seems to me very improbable that this group, three days old, could have compiled all this material only eight days after the councilman announced his plan. This raises the question of where that material came from and who had been gathering it all along. But I think the attack was such an excess that I'm glad it was made. On balance, I think, it has been a favorable development.

**Sugarman** But let's trace that back. Dave Cohen was not with the Germantown Council for Community Control of Police three or four months ago. Now, what has happened in the meantime? One thing was the Gerald Goode case, which helped move the District Attorney on the Brown case, which, in turn, helped move Dave Cohen and the *Inquirer* and a whole range of other things. I can't pinpoint the Goode case or any other single event as *the* determining factor, and yet it does seem to me that each thing that gets thrown in pays off in terms of changing public opinion.

**Hearn** I think that's true. The Brown case was the first one in twelve years in which criminal proceedings were initiated against police officers in this town as a result of a confrontation with members of the general public. I do think that the effort that we made in the Goode case did help to produce the result in the Brown case, which happened to be the next case along.

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**"It is psychologically impossible for anyone to practice in a legal services project without ending up like a tired social worker. The brick wall is always there. The same is true for poor people in their daily lives, but the difference is that they can't escape from it."**

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**Sugarman** That's why I think, Peter, that the increasing breakdown of the monolithic confrontation between classes is relevant. That is to say, I think that you're enhancing your position among clients and lawyers who see points of common interest with you. Police practices may comprise a relatively narrow area in which you may be less likely to get cases for representation than in others. But, for example, you're naturally allied to the draft area, to the open-housing area and to other such areas in which there are increasing amounts of compensable litigation.

**Hearn** I just don't see the connection. But right now I'm really bothered by being identified as anti-police, and I don't see a way out of it. You see, besides these cases, there are other factors which make me even more strongly identified as anti-police: I'm chairman of the Bar Association Civil Rights Committee, and we recently issued a report on the police; and I'm identified with the ACLU, where I'm chairman of the Police Practices Committee.

**Wolf** You must be a cop-hater!

**Gilhool** Ten years ago, the lawyer you mentioned before was way out front alone, just as you are now in the police area. But now there are a lot more people around than there were when he was way out there.

**Hearn** I'm talking about the problems he has today, though. It may be that my perception of his situation is not correct. Perhaps he doesn't have the problems I think he does. I believe he has a good practice, but somehow he's a little off the type of practice he had several years ago. He hasn't had a really big case since 1962 and 1963.

**Sugarman** That's only your definition of what a big case is, Peter. But there will continue to be guys who will regard him as a first-rate lawyer. What was big about the cases he had in 1962 and 1963? Not the legal principles involved or the challenges or his performance as a lawyer—just the size of the fee and the amount of money involved and the names of the defendants.

**Hearn** Well, I think there were other factors. Just in terms of the size of the confrontation, the 1962 case was a clash of enormous proportion.

**Sugarman** My own view is that the dominance of that kind of litigation and those kinds of clients over the bar is going to be a relatively passing thing, and I think that there is going to be more and more satisfaction, both economic and professional, for the lawyer who is not seen as being totally committed to that kind of client.

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**“The strictures imposed by public funds are even greater than those imposed by private clients.”**

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**Hearn** How do you view my plans to avoid any new police cases for, say, a year or so? Do you think that's right or wrong?

**Sugarman** I don't think it's right or wrong. I think it might well be right from your point of view. You've certainly done your part, and you have the right to take a breather. But I think that you ought to be looking for ways to connect this situation up with other similar situations, for ways to turn your identification into an advantage rather than view it as something to be erased.

**Hearn** A potential client just doesn't want to take on the problems that come with a guy who's very controversial. You want somebody who's effective and persuasive, but why take all these liabilities if you can get somebody without them?

**Sugarman** Because these potential clients may be people who identify more with what you call your liabilities than with your assets.

**Hearn** Even if there are people like that, I don't see how I could build a practice on that. That's not the kind of practice that will get me up to the top levels of my firm. It's the ones who produce the clients who end up at the top levels.

**Sugarman** I guess I have to agree. The firms are not prepared to entertain that kind of representation, even though it's viable as an economic proposition. You may just have to give it up in order to remain in a large firm; I'll let you know in a couple of years. But what needs to be found is the road for the lawyer who wants to do this kind of work and make it pay economically, and who is willing to think in terms of new models of legal practice. We have to find ways to get some of the highly paid, highly competent, highly experienced trial lawyers from some of the major firms to go to work permanently for community legal-services types of things, where they would have complete independence of their loyalties.

109

**Zerkin** If you're concerned about the need for experienced lawyers, why not talk about solving the problem of turnover, that is, finding ways to retain young lawyers who go to work for community legal services programs?

**Gilhool** Based on my personal experience and the experience of many others around the country, it is psychologically impossible for anyone to practice at any kind of a decent clip in a legal services project for anything more than three or four years without ending up like a tired social worker whose response to a problem is that nothing can be done about it. That syndrome is very widespread around the country. You get tired, and the brick wall is still there all the time. The same is true for poor people in their daily lives, but the difference is that they can't escape from it. You just can't come back any more. And that means that somehow you have to get refreshment.

Then the problem is: where the devil do you get refreshment? In my experience, returning to a law firm is not very satisfactory—even for a very short period of time. First, even though one's energy is gone, one's sense of what one ought to be doing persists; and second, a law firm, for all the reasons we've talked about, is really not very hospitable to one's treating such work as high-priority. The guy who comes out of legal services and retains some part of a legal service practice may end up suing guys whom the law firm is somehow in bed with.

And you run into peer problems as well. The guys who, like so many of us of our generation, have been socialized to think that we ought to be doing socially conscious work, but who are there in the law firm, giving their little bit of tribute to their social values, tend to look disapprovingly on those of us who left the firm to go into legal services and then have come back and have kept doing legal services-type work, while they've been doing all this crap the whole time.

All in all, I'm not very sanguine about the career possibilities.

**Hearn** Bob, about the alternative of leaving the large firm and going to work for community legal services where you'd have the freedom of choice and decision and action—it seems to me that the strictures imposed by public funds are even greater than those imposed by private clients on large law firms. I'm not saying that the situation in the firms is good, but I don't think that the answer necessarily lies in going to work for community legal services. Besides, there may not be any community legal services five years from now. I really have doubts about their future.

**Wolf** Speaking of public funds, there is an area we haven't mentioned yet: the public sector. I can speak to that to some extent because I was in a public position. I don't think, in retrospect, that I made the most of it, although I'm not entirely sure what more was possible under the circumstances.

**Gilhool** Arlen [Specter, the Philadelphia District Attorney] would have said 'No' to whatever you would have wanted to try that was innovative.

**Wolf** That may be true, but I have the uncomfortable feeling that that's an easy answer and that it doesn't cover the range of things I could have done without Arlen knowing or becoming concerned.

**Sugarman** It would have required a superhuman effort for you to have tried to stand up every day and fight your own employer. I mean, psychologically that situation would have been untenable.

**Hearn** Arlen said the other day that you can do far more for civil liberties inside the District Attorney's office than you can as a member of the criminal defense bar.

**Gilhool** That's what he says every time he asks someone to join his office. They're there for three weeks, and they discover what bullshit it is.

**Hearn** Never having been inside the office, I don't know, but it seems to me that those possibilities would exist since you would have ten cases a day, as opposed to one.

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**“The day you succeed in building the financial nexus between the poverty client and the lawyer is the day that you will no longer be representing the clients.”**

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**Sugarman** I’m speaking now primarily from my experience in city planning. I remember taking part in a panel a couple of years ago with Paul Davidoff. He was advocating the idea that city planners should all join planning commissions and constitute an inside force for change. But what one really ends up doing is fulfilling the day-to-day requirements of the job.

**Gilhool** Exactly. The roles are so well entrenched that it is virtually impossible to escape them.

**Wolf** I don’t agree with that. If you go to work for a guy who is really committed to the kinds of things that you believe in . . .

**Sugarman** Maybe, but we have yet to elect anybody like that.

**Gilhool** That’s right. There’s nobody like that in public office.

**Wolf** I think we’re talking about degrees. Arlen put me in charge of juveniles, a fairly unimportant part of the District Attorney’s office, and maybe he did it because it lacks visibility . . .

**Sugarman** But you have to say what ‘putting in charge’ meant.

**Wolf** Well, he gave me a lot of discretion to deal with individual cases.

**Sugarman** Within very clearly understood, although maybe implicit, limits?

**Wolf** I don’t know. I let a lot of people go.

**Sugarman** Yes, you did—as long as you didn’t create any waves. But you knew all the time that you couldn’t create waves, that you could do something only if it could be done quietly. There’s nothing wrong with that except that it doesn’t change the thrust of the institution.

**Gilhool** And that goes back to the problem of being in a law firm which will take a case only if it won’t create waves and to the problem of changing the firms.

**Sugarman** It keeps coming back to the need for independence.

**Gilhool** We’ve been struggling with this a long time. I just don’t see where the financial sustenance comes from. You know we’re always looking for a *deus ex machina*. It seems to me, both in terms of law firms and in terms of a sustained kind of career outside of the traditional law firm, that we have to begin to look for that financial nexus that makes it all make sense. That is, we have to find a way of merging the client’s interest with the attorney’s economic needs. We’ve got attorney’s fees and treble damages on the anti-trust side, for instance. Maybe the young guys in the profession have to begin to force out of Congress and elsewhere similar kinds of financial return on welfare cases, public housing cases, consumer class actions, etc.

**Sugarman** But when you start looking at this in terms of financial nexus, you begin to lose sight of the purposes that you were initially after.

**Hearn** You’ve got to have a financial connection.

**Sugarman** And yet it’s the financial nexus that creates the very . . .

**Wolf** . . . Difficulty. Yes, exactly right.

**Sugarman** Maybe this leads to a conclusion about the limitations of the law and lawyers. How much can the law and the lawyers be expected to do?

**Gilhool** It’s a limitation of *noblesse oblige*, that’s all. And that’s why I think we have to create connections between the client’s interests and the attorney’s financial needs.

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**Sugarman** The day you succeed in building the financial nexus is the day that you will no longer be representing the clients. The problem is the inconsistency between concentrating on your economic interest and representing the poverty community.

**Gilhool** I don't think so, not if that nexus runs to people in the poverty community.

**Hearn** How about the consumer class action, for example?

**Sugarman** In that kind of case, the attorney would be interested in the financial returns and not in the legal principles involved. He'd be after cases with defendants who are going to be able to pay. The fundamental poverty- or client-oriented emphasis gets distorted because the financial rewards are never related to the clients.

**Hearn** They're pretty closely related, aren't they?

**Sugarman** No. Take the guys who bring stockholders' derivative suits. They bring strike suits all over the country, because they're looking for the suits with the money, not for the suits that need to be brought.

**Hearn** Yes, but what about the consumer class action which may be possible under present Rule 23 and which may be expanded as a consumer relief tool? It would seem to me that this would be a great possibility. I would think that the lawyer's financial interest and the interest of the poverty community would then be pretty damn close.

**Sugarman** No question, it is helpful. I don't mean to deny that it's got some value.

**Gilhool** It should mean a hell of a lot on the consumer side, both in terms of individuals and, more significantly, in terms of the growth of consumer groups. But let me give you a case where it hasn't worked out. There was hope approximately two years ago that HEW was going to provide funding under the Social Services Amendment for representation for welfare recipients. And there was the further hope that the money would be sent through organizations of public assistance recipients which would hire the lawyers. That kind of nexus, it seems to me, would be very real. But it hasn't happened, essentially for political reasons.

**Zerkin** Underlying any model of representation and the nexus that makes it possible is a resource allocation decision: there is a limited amount of time and a limited number of lawyers; someone has to be deciding what kinds of cases get brought.

**Sugarman** No, no, that's a common mistake. I couldn't quarrel with that more, the idea that some central body should be making decisions.

**Gilhool** But we've got that now. I would like to know exactly how much of a tax subsidy there is for the legal work done by law firms. Corporations and individuals deduct professional service fees from their corporate or individual income tax. I'd like to measure that against the grant form of subsidy that we have for low-income citizens. It seems to me that we have exactly that now, a central body deciding how our legal services are going to be distributed in this society. And the fact is that we are distributing them upwards, just as we're distributing every other subsidy upwards. The rich are getting the best of it, straight out of federal government subsidies.

**Sugarman** The point is that the subsidy doesn't come from a unilateral decision by the federal government. It also involves corporate expenditures. Sure, corporations are subsidized to the extent of fifty cents on the dollar. But the point I'm making—and I reacted somewhat emotionally because I'm really sick and tired of seeing statements that a single group should decide which suits should be brought and which suits shouldn't—is that the result of such an arrangement is always to cut down on the total amount of services that are available, just as the effect of centralizing housing services or educational services is to cut down on the gross amount of services that are available.

**Zerkin** The thrust of my question was not in that direction at all. On the contrary, I'm thinking about the decentralization of those decisions. What I was getting at was that a lawyer who is committed to bringing suits on behalf of poor communities

ought to refer back to the community for the decisions about how he, as a resource, is to be allocated. It seems to me that lawyers tend to pick out the suits which they find interesting. They lean towards the suits which they think have the most significant questions embodied in them, but they don't refer back to the community as a whole to see what the community's priorities are.

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**“The community is not your client. The person or group who comes to see you is your client, and the community as a whole has no right to decide whether your client is going to have a lawsuit brought.”**

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**Sugarman** They *shouldn't* have reference to the community as a whole—that's exactly my point. The community as a whole has no right to decide whether your particular client is going to have a lawsuit brought.

**Zerkin** No, but your decision to bring that client's lawsuit, as opposed to seeking out other problems in the community about which suits could conceivably be brought, represents a decision on your part and not the community's as to what the priorities are,

**Sugarman** It's imperfect, but it's far better than allowing any overall group to decide whether a particular client is going to be represented.

**Zerkin** Doesn't it depend on how you view your role? If your role is *community service*, then the community has a right to dispose of your services.

**Sugarman** I think that represents an unfortunate misuse of the word 'community.' The community is not your client. The person or group who comes to see you is your client. And to allow the opposition to instill the idea that the community is your client and that you can't represent anybody unless the entire community . . .

**Gilhool** That's what Don Rumsfeld of O.E.O. is now saying: 'The community is your client, and you shall account to me, the President and the Congress, because we represent the community.' But I think there are some gross differences, or I once would have thought there were, between the four models we represent, in terms of the kind of direction that the community provides for the lawyer. I was convinced of that a couple of years ago but am a little less convinced of it now, because I think there is at least as much grandstanding going on among full-time legal services lawyers, who seek the big issues that take them to the Supreme Court, as there may be among law firms who, for the same kind of professional reasons, are seeking the great cases from Ned. 'We'll turn this one down, but give us the great one, and we'll run with it.'

**Zerkin** Ned, how are decisions made at the Lawyers' Committee as to which cases are going to be referred out, which cases will be handled by the Lawyers' Committee and which can't be accepted at all?

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**“There is as much grandstanding going on among full-time legal services lawyers who seek the big issues that take them to the Supreme Court as there may be among law firms who are seeking the great cases from the Lawyers' Committee.”**

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**Wolf** Basically, the cases I don't refer to firms are in areas where I have particular interests and experience. I kept one case because the people I was working with really couldn't understand what I was talking about until we lost the case at the

trial. Then they finally understood what I was driving at. At that point, I probably could have turned the case over, but I didn't because I was too involved with it. Some cases take a lot of selling, and I tend not to turn over to firms those that do. When the issue or the objective is fairly clear, I'll turn it over.

One of the things we've thought about is whether we ought to create a community board which would give us a sense of how the community would like our cases handled. But I'm not sure how meaningful it is to talk about a community in Philadelphia. To whom do you choose to be accountable? We could set up a group of five people; we could meet every other week and ask whether we should take this case and whether, if we take it, we should refer it out or handle it ourselves—go through the whole thing and ask them to make the decision. But in a real sense, my constituency is not the clients or the potential body of clients. My constituency is really the law firms.

**Kalba** Doesn't the problem of resource allocation go to the question of strategic rationales? On the one hand, it's often argued that it's strategically much more important to go after the demonstration case; on the other hand, some say that what is really more effective is just amassing hundreds and thousands of little cases.

**Gilhool** In other words, that the mode of law reform is to overwhelm the system with individual landlord-tenant or special-grant public assistance cases.

**Sugarman** Nobody knows which way it's going to go, so everyone has to do his own thing, and everybody has to serve his own client. The result has to come out of the confluence of the various strategies that various guys are at home with. There is no way to program the thing from the outset.

**Gilhool** I suspect the answer to that argument is that it just won't happen that way. There just aren't enough lawyers to bring all those cases.

**Sugarman** But overwhelming the system does not necessarily require an overall view or strategy. It may be that a particular judge or court will be overwhelmed. You can't predict what's going to bring it about, and, therefore, you can't try to centralize it and program it out.

**Gilhool** That's another way of saying that the disjunction between the service case and the law reform case is false, that the lawyers are all really just practicing law. And anybody who's had any experience in the area knows that if you work enough with any client who comes out of a poverty community you will discover sixteen great so-called law reform cases.

**Sugarman** And you'd better be ready to settle them when you can settle on an advantageous basis.

**Zerkin** Advantageous to whom? To that client?

**Sugarman** To that client.

**Zerkin** It seems to me, again, that it really goes to the nature of your role. If you are serving individual clients, there may be a discrepancy between what will be an advantageous settlement for the client and what would be an advantageous prosecution of the case and the issue for the community.

**Sugarman** You're not considering the fact that different clients may consider different things advantageous. There are going to be clients who will want to test the general principles.

**Hearn** Yes, but generally you don't have that client in the case where the facts indicate that you have a good test situation. It's rather accidental if you get them together.

**Sugarman** That's why you have to take hundreds of cases before you get the . . .

**Gilhool** My experience is exactly the opposite. I've yet to ask a client, 'Should we settle this now, or should we go ahead and establish the general principle?' and get any answer back except, 'I want to establish the general principle.'

**Sugarman** You're imposing that on the client.

**Gilhool** That may very well be.

**Hearn** The clients say, 'Let's establish the general principle'? I'm very surprised by that.

- Kalba** It probably depends upon the relationship of the lawyer to the community and the extent to which he has been able to instill a notion of community.
- Gilhool** There may be something to that. Most of the clients of whom I speak are those with whom I have had a relationship, or who have appeared as clients out of their own relationship with a client group, like a welfare rights organization or a tenants council. So I guess there may be a self-selection principle operating.
- Hearn** Well, I wonder whether your experience is unique because of your position with C.L.S. and your notoriety.
- Gilhool** It may be unique because of the way we defined our role from the beginning. What we were after were not just plain old law suits. From the beginning, we were interested in building organizations which would sustain themselves. Law suits were to be a part of that process. Legal services programs at their best are exactly that—they're sustained representation. They're not concerned with cases for the sake of cases; they're concerned with cases, negotiations or whatever inasmuch as they advance the strength and the cause of organized constituencies among the disenfranchised.
- Sugarman** But C.L.S. is at least institutionally able to go out and do the infrastructural work necessary to create clients with purposes larger than the result in the individual cases. We in the firms are much more constrained from performing that function. We are accustomed to providing a much narrower range of traditional legal services. For one thing, there is the hourly rate which we are accustomed to think in terms of.
- Gilhool** Exactly. It's a very time-consuming process. It's not terribly different from the time lawyers spend in country clubs and clubs downtown.
- Sugarman** It's not so much a question of obtaining clients, Tom, as it is of how much service you have to perform for the clients and how much the clients are able to perform services for themselves. It's a reflection of the fact that the broad range of non-legal skills that the establishment clients have available to them are not available to poverty and minority clients. Organizations in the black community just don't have those kinds of skills in any capturable, sustainable form. There isn't enough of an experienced infrastructure around. Corporate clients have experience, so they call on their lawyers for a lot less.
- Gilhool** Yes, the lawyer in the kind of organized, strategic effort that we're talking about plays the roles of lawyer, planner, accountant and all the other personnel that corporations have and are taking tax deductions for.
- But to go back to the question of community decision about what you do with your limited resources, it seems to me that, for example, a welfare rights group can say to its lawyers that this case isn't important, but the case on the emergency grants is. Gary Bellow of California Rural Legal Assistance had the kind of relationship to the town he was in that enabled him to say, 'What will we do? We're overwhelmed; we can close down for three months and do these three cases and not the others or . . .'
- Wolf** You were never in that position, though.
- Gilhool** That's essentially right, and I think whether one is in that position or not depends upon how successful we have been—and I'm not just talking about lawyers now—in growing together politically. Resource allocation is essentially a political decision, and as communities are more closely and fully organized politically, those decisions can be made as they were in Salinas, California, and as they have been in the welfare area over an even longer period of time.
- Sugarman** A prior essential element, I think, is the client group's identification of its self-interest, because that's where the initial thrust of the client's energy comes from. Once the client group is able to articulate a sense of direction and has the confidence in you to speak to you about it, the political dimension, which I see as the generalization of their self-interest, becomes possible. The first interest of the client group is an economic or other form of immediate self-interest, and not a political one in the sense of relating to the whole Philadelphia community, for example. The political interest can be regarded as seeing beyond the immediate gains of the client group in the particular case to an ultimate effect on the system of distributing benefits and burdens.



- Gilhool** It seems to me that you're saying the political interest is concerned with the "the public interest."
- Sugarman** No, I'm not saying that. I remember hearing James Wilson's thesis several years ago and thinking then that it was a bunch of bullshit. The idea of public-regarding people is just nonsense. The question is: whose privacy are they regarding? The point I'm making is that there are different levels of self-interest, some more immediate and others more distant, some more specific and others more general. The level of desires that a client group is first able to articulate and attempts to impose on you is the immediate one.
- Gilhool** That has not been my experience.
- Kalba** It depends on the nature of the group, doesn't it?
- Gilhool** Yes, it may well be that public assistance is special in that addressing the immediate needs of people has long-range effects. But I guess that in the consumer area the difference that you draw is very clear, Bob.
- Sugarman** In the housing area, for example, non-profit corporations which call me for legal advice aren't interested in establishing a new set of FHA regulations or fighting for a new housing act. They're interested in getting a project going under section 235J of the Housing Act.
- Gilhool** And unlike the public assistance situation, getting that project going doesn't have any clear implications for changing the system. On the other hand, that's not true in the public housing area.
- Sugarman** But you guys had such complete dominance over your clients in that situation. You provided them with services, all the while having a very clear idea of where you wanted to go. You really dominated their thoughts; they were very passive. I'm not saying that it wasn't a constructive thing. It's like the guys who worked in the South in '61 and '62. A lot of their clients could have gotten on the voting rolls in return for abandoning the efforts to get the whole black community on. What I'm really saying, and what I tried to say earlier, is that I think a combination of the self-interest and political approaches is the most valuable. When Peter takes the Goode case and pursues its larger implications, he then makes it easier for the 'dragnet' case. They all feed each other.
- Hearn** What follows from that? A big quantity of cases?
- Sugarman** Sure, there is no substitute for a big quantity of cases.
- Hearn** Regardless of the outcome?
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- "What we're looking for is a strategy for achieving maximum results with minimum time and effort, and I think the strategy is to fight on all fronts at once."**
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- Gilhool** Let me raise another question. Four years ago, I wrote an agenda. By now, everything on that agenda has either been decided affirmatively or is in court, from confession of judgment to admission to public housing. And yet I don't have any sense that the world is so different.
- Sugarman** You're working for a political candidate today, and four years ago that would have been inconceivable.
- Gilhool** Yes, that's true. About two years ago, I gave an interview to my college alumni magazine, and I said that this public stuff, this political stuff, is crap—or, if it's not crap, it's premature—and that what has to happen first is the building of strong private constituencies.
- Wolf** They're interrelated, though, aren't they?
- Gilhool** Very much. To some extent it has happened, but the private strength hasn't grown nearly in the way I would have said then that it would have to grow before I would look at politics. Partly, it's the frustration I spoke of earlier that leads one to understand how a guy who is Secretary of Highways can help bring about change. You begin to see that it's the relationship between, say, the Secretary of Welfare and welfare rights organizations—Tom Georges, beautiful guy that

he is, would never have presented to the Governor the first budget in the history of Pennsylvania calling for public assistance at 100% of need if there hadn't been a welfare rights organization. On the other hand, if there hadn't been a Tom Georges, even if there had been a welfare rights organization, that request wouldn't have been presented.

**Zerkin** That suggests that legal action has to be considered in the context of the creation of political power. And it occurs to me that since the kind of legal needs that poor communities have stem from their powerlessness, if they got power, they would no longer need the same kinds of legal services.

**Zerkin** That suggests, then, that lawyers should be involved in developing those kinds of client groups.

**Wolf** But that's not going to be the situation. One of the problems that the Lawyers' Committee has had—and it's a very difficult one—is what to do when a community group in an urban renewal area comes to us and says, 'We want a lawyer to fight this other community group in the urban renewal area.' Both of them are entitled to lawyers. I think that the identity of the opponent will change, but people's need for legal services won't. Our lives are surrounded by legal relationships.

**Sugarman** No. You keep trying to make it uni-dimensional. You keep on trying to impose a pattern on every lawyer. It's one thing to define what we're trying to do, but it's another thing to define the individual pattern that each guy has to follow.

**Gilhool** But if we're talking about how to distribute our energies, it seems to me . . . I'm not sure . . .

**Gilhool** I disagree. Once we redistribute the wealth, we'll be O.K.

**Zerkin** I'm not arguing that it is imperative for every person to follow one role. But we have to recognize that every situation does have implications in terms of the distribution of limited resources.

**Wolf** No, even if you redistribute it, there won't be any less interest in beating the other guy, in getting a better deal.

**Gilhool** You know, Bob, three years ago you could have brought a lawsuit to stop the Crosstown Expressway. Instead, you helped build a group of citizens to plan and fight it out politically. It's a hard question—I'm not sure which way I'd come out on it—but I think I would come out the same way and not bring the lawsuit, that is, sacrifice the possibility of establishing the legal principle and proceed to build an increasing constituency of people.

**Sugarman** No matter how society changes, there are always going to be people with relative powerlessness. Every time you beat down one problem, another one arises out of the solution. That doesn't mean that nothing is going to be accomplished.

**Zerkin** Aren't there ways of combining the two, making a lawsuit the focus of the organizational activity?

Take a look at the history of this country. Today we have a smaller class that's being excluded from the benefits of the society than we had a hundred years ago. I think we're going to make it smaller still. We're going to bring more and more people into the mainstream. That doesn't mean that there aren't going to be differences; it means that the differences are going to be constantly diminishing. I don't think that we're ever going to have Utopia. We're going to continue to have underprivileged classes, and they are going to continue to need representation.

**Sugarman** Not necessarily. To bring a lawsuit in a particular case, and the Crosstown is an illustration, can be inconsistent to some extent with the development of political strength if it allows the clients and the politicians to avoid the political confrontation.

What we're looking for is a strategy for achieving maximum results with minimum time and minimum effort, and I think what we're saying is that the strategy is to fight on all fronts at once.